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September 29, 2015

VIA ECF AND EMAIL

Hon. Matthew F. Kennelly
United States District Court
Northern District of Illinois
Everett McKinley Dirksen
United States Courthouse
219 South Dearborn Street
Chicago, IL 60604

Re: *In re Testosterone Replacement Therapy Products Liability Litigation*

Dear Judge Kennelly:

I write on behalf of AbbVie in response to yesterday's letter from the Plaintiffs' Steering Committee, which asks to use the expedited discovery motion setting this Thursday for a "brief" conference in order to obtain further guidance from the Court regarding the bellwether selection process. We are concerned about trying to fit a meaningful discussion of the bellwether process into the Court's motions' schedule, particularly given the importance of bellwether selection to the case as a whole and the need to frame any new issue in the context of the extensive discussions that have taken place among the parties and with the Court. While there is an agreed deadline of October 1, 2015 for the parties to make their proposed selections of the 32 discovery bellwethers, we have already informed the PSC that we do not object to extending that deadline until Monday and, further, that we are prepared to discuss extending it further following the Court's discovery rulings this Thursday.

The August 24, 2015 email attached to this letter reflects the agreed schedule for the selection of discovery bellwethers. That agreement was reported to the Court in a telephonic conference the same day, without any dispute. The schedule falls in line with the Court's guidance during the August 18, 2015 hearing on the bellwether selection process. (8/18/15 Tr. excerpt attached) At that hearing, the Court directed the parties to make a random selection of 100 claims from the pool of eligible claimants and then determine whether those selected would provide *Lexecon* waivers. (8/18/15 Tr. at 71) Without reaching an ultimate decision on a random vs. attorney selection process for the 32 bellwethers, the Court indicated that it could "arbitrate" between the selections ultimately made (8/18/15 Tr. at 69-70), while it cautioned at a later conference in chambers that it could also decide on its own approach. The schedule agreed in the August 24th



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email and reported to the Court the same day implemented the Court's guidance, setting dates for the random selection of 100 pool members, *Lexecon* waivers (it turned out that only 28 needed to be obtained), and selecting the 32 bellwethers (set for October 1). This schedule would allow the full month of October for the Court to conduct a hearing on the proposed selections and still meet the October 31st deadline for bellwether selection in CMO 14. Of course, the October 31st date itself drives the rest of the pretrial schedule, and that too is before the Court for further consideration. The Court will recall that AbbVie's pending proposal for the bellwether selection process also requested certain changes to the scope and timing of fact and expert discovery (including full discovery of the 32 bellwethers) and dispositive motion practice on cross-cutting issues. (Dkt 932) This too was discussed during the August 18 hearing. (8/18/15 Tr. at 84-86)

We believe that using the expedited setting this Thursday to discuss the October 1 deadline for selecting the 32 discovery bellwethers is just not practical. It is difficult enough for the parties to keep track of the pending issues and their relationships. As the Court has observed on many occasions, the same task is even more challenging for it. AbbVie believes that the better course is for the parties to confer on any necessary extension of the October 1 deadline, following the expedited hearing. We should also confer about and propose a date in October for a special setting to take up actual "slates" for discovery bellwethers, which will reflect the procedures the parties have already advocated to the Court. The Court will then be in a position to decide issues regarding representativeness and regarding the related proposals for the balance of the case management schedule.

Respectfully submitted,

/s/David Bernick
David Bernick

cc: All Counsel of Record